

INDEPENDENT INVESTIGATION MODELS

*A survey of
jurisdictions across the
country using
independent
investigation models
for serious and deadly
uses of force by law
enforcement*

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Wisconsin



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Background



Origin

In April 2014, Wisconsin enacted a law requiring independent investigations of officer-involved deaths. Wisconsin was the first state in the country to pass a law requiring independent investigations of officer-involved deaths.



Investigator: At least two independent investigators are required to conduct the investigation of any officer-involved death. Investigators may not be employed by the same agency as the officer involved in the incident.



Designator: The department of the officer involved in the incident chooses the agency that investigates the incident.



Timeline: The Wisconsin Department of Justice's Division of Criminal Investigations (DCI) has led most investigations since January 2015 and DCI-led investigations generally take between one and four months to complete.



Charging: After an investigation is complete, investigators present a report of their findings to the jurisdiction's District Attorney (DA) who then determines whether there is a basis to prosecute.



Public Report: If the DA chooses not to file charges against the officer, the investigators release the report to the public.



Scope of Law: Deaths involving officers.

- Wisconsin Statute § 175.47: <https://docs.legis.wisconsin.gov/statutes/statutes/175/47>
- Milwaukee Police Department, "Officer Involved Critical Incidents/Milwaukee Area Investigative Team (MAIT)," <http://city.milwaukee.gov/police/Officer-Involved-Critical-Incidents.htm>
- Thank you to Seattle Office of Police Accountability for providing their research on Wisconsin's independent investigation model reflected in these slides.

Outcomes



Case Volume

The state has investigated a total of 75 incidents since independent reviews began in 2014 through the end of 2017. DCI investigated 46 of these incidents.

Findings

Of the 75 incidents, one officer has faced charges stemming from an investigation.



The officer was acquitted by a jury.

Pros & Cons



Pros

Investigator Expertise: DCI investigators deal solely with high-profile and complex criminal investigations. As a result, their capacity and resources to manage complicated officer-involved death investigation may exceed that of local law enforcement.

Popular and Law Enforcement Support: Wisconsin's model, at its inception, had widespread public support and support from Wisconsin's largest police union.

Transparency: Investigators are required by statute to release the report submitted to the district attorney to the public if the district attorney declines to prosecute, allowing the public to track incidents.

Some Local Flexibility Retained: Wisconsin law's only requirement is that two independent investigators conduct the investigation, allowing for flexibility in who throughout the state investigates a particular incident.

Investigations Completed Promptly: DCI-led investigations generally take between one and four months to complete, potentially due to DCI's capacity and resources.

Pros & Cons



Cons

Logistical Challenges: Transferring investigative control likely results in delayed evidence gathering. It may also take several hours just for an investigator to get to a scene.

Potential for Bias or Conflict: Investigators still have ties to the law enforcement field. There is still a belief that law enforcement is incapable of objectively and independently investigating one another, which may undermine public trust in an investigation.

District Attorneys, who ultimately decide whether to take action, work closely with officers on a daily basis.

Investigators could have direct ties to the department they investigate.

- Case of Dontre Hamilton: DCI investigators were formerly part of the Milwaukee Police Department

Statewide Consultancy Market: A multiagency model allows for departments to pick and choose investigators, creating a potential to shop for a potentially favorable inquiry.

No Statewide Standards: There are no statewide standards for how to investigate an incident, or to protect against conflicts of interest. An investigation conducted by DCI may differ drastically from an investigation conducted by a local law enforcement agency due the differences in capacity, resources, skills, and expertise.

Community Reception & Proposed Reforms



"It's like me killing someone and my family gets to determine what the consequences of that are. The [state] DOJ represents the same system."

- Brandi Grayson, Young Gifted and Black Coalition

"They may still be working on the same playing field and working on things through the same lens [as local law enforcement would]."

- David Owens, Attorney for Tony Robinson family

Proposed Reforms to Law

- Set up a citizen board, a panel made up of law enforcement and community members, to review cases.
- Require those investigating officer-involved shooting deaths to not have recently worked with the force they're investigating.
- Hand the decision of whether or not to indict police officers who fatally shoot civilians to special prosecutors, rather than district attorneys.

Connecticut



Background

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Background



Investigator: A special prosecutor or a prosecutor from a different judicial district is required to investigate. The investigating state's attorney works with the Connecticut State Police to process the scene and conduct an investigation.



Report: Upon the conclusion of an investigation of the incident, the prosecutor files a report with the Chief State's Attorney. The Chief State's Attorney must provide a copy of the report of the executive of the municipality where the incident occurred and to the Commissioners of Emergency Services and Public Protection or the chief of police.

Origin

In June 2015, Connecticut enacted legislation mandating prosecutorial reassignment in officer-involved deaths.



Designator: The Chief State's Attorney, who is appointed, designates a prosecutorial official to conduct the investigation.



Charging: The Division of Criminal Justice (DCJ), which is the office of the Chief State's Attorney, decides whether to take action and charge an officer.



Timeline: Investigations take average of nine to 12 months to complete. Investigations can take as long as two years.



Scope of Law: Use of physical force by a peace officer that results in death of another person.

- General Statutes of Connecticut, Sec. 51-277a: http://search.cga.state.ct.us/r/statute/dtsearch_form.asp
- Connecticut Conference of Municipalities, "National Unrest Sharpens CT's Focus on Police-Community Trust": <https://www.ccm-ct.org/policecommunityrelations>
- CT Post, "Expert: police use of force investigations can take year or more": <https://www.ctpost.com/local/article/Expert-police-use-of-force-investigations-can-12509068.php>
- <http://wnpr.org/post/police-excessive-force-bill-passes-state-legislature-special-session>

Outcomes



Case Volume

Since the effective date of the legislation, October 1, 2015, approximately 13 deadly force investigations have been completed. There are two investigations currently underway.*

Findings

Of the 13 incident investigations, all involved officers were found to be justified in using deadly physical force.



*Due to the lengthy timelines of investigations, certain investigations completed after the effective date were of incidents that occurred before the effective date, and were therefore conducted outside of new legislative mandate. We learned of the two investigations currently underway via an email conversation with the Division of Criminal Justice on June 13, 2018.

- State of Connecticut, Division of Criminal Justice, "Deadly Force Reports Index": <http://ct.gov/csao/cwp/view.asp?A=1802&Q=286114>

Pros & Cons



Pros

Prosecutor-Led Investigations: Investigations are not led by another law enforcement agency, but a special prosecutor or a prosecutor from a different jurisdiction, which may foster impartiality.

Designation Authority: The Chief State's Attorney chooses the prosecutorial official to conduct the investigation, which prevents departments from being able to pick and choose investigators and shop for a potentially favorable inquiry.

Community Confidence in DCJ and Process: After the enactment of legislation to require independent investigations, reformists proposed requiring all uses of force to be investigated via the same process as uses of force resulting in death.

Community Engagement: The Chief State's Attorney has held public meetings with community members to answer question about investigation processes.

Law Enforcement Support: The Connecticut Chiefs of Police Association supported the bill.

- Hartford Courant, "Top Prosecutor Changes Policy On Police Use-of-Force Investigations": <http://www.courant.com/politics/hc-new-use-of-force-investigation-policy-20150320-story.html>
- CT Post, "Expert: police use of force investigations can take year or more": <https://www.ctpost.com/local/article/Expert-police-use-of-force-investigations-can-12509068.php>
- Hartford Courant, "Lawmakers, Organizations Push For Police Reform After Fatal Bridgeport Officer-Involved Shooting": <http://www.courant.com/breaking-news/hc-police-reform-press-conference-0517-20170516-story.html>

Pros & Cons



Cons

Lengthy Investigation Periods: Investigations take an average of nine to 12 months. One investigation took 19 months between the incident and the release of a report.

Lack of Transparency: The long timeline and limited communications by the investigating prosecutor during this timeline breeds mistrust in community in the process, creating tension. Although the DCJ posts reports on its website, the law does not require DCJ to publish the investigation reports.

No Statewide Standards: There are no statewide standards for how to investigate an incident across state's attorney's offices, although each state's attorney works with the Connecticut State Police.

Limited Scope: The law only applies to uses of force that result in the death of another person.

- State of Connecticut, Division of Criminal Justice, "Report of the State's Attorney for the Judicial District of Danbury Concerning the Use of Deadly Force Resulting in the Death of Dylan Pape in Stamford, Connecticut, on March 21, 2016": <http://ct.gov/csao/cwp/view.asp?a=1802&q=596770>
- The Yale Herald, "A Symbol with Substance": <https://yaleherald.com/a-symbol-with-substance-96d70c72d35>

Community Reception & Proposed Reforms



"This investigation by the state police... this has been a sham from the start.. We know the police can't investigate the police."

- Jeannia Fu, Justice for Jayson

"Prosecutors and police should not expect the benefit of the doubt regarding their investigations into police uses of force when all signs point to a system that does not hold police accountable."

- ACLU of Connecticut

Proposed Reforms to Law

- Require that a state's attorney, outside the judicial district of the incident, investigate all use of force that results in serious injury, not just if there was a death.
- Create tight deadlines (15-day) to complete initial police use of force investigations and require the DCJ to publicly release its findings.

- State of Connecticut, General Assembly, House Bill 6663 (2017): <https://www.cga.ct.gov/2017/FC/pdf/2017HB-06663-R000221-FC.pdf>
- Hartford Courant, "Lawmakers, Organizations Push For Police Reform After Fatal Bridgeport Officer-Involved Shooting": <http://www.courant.com/breaking-news/hc-police-reform-press-conference-0517-20170516-story.html>
- CBS News, "Protests after Conn. Officer cleared in unarmed teen's killing": <https://www.cbsnews.com/news/protests-after-conn-officer-cleared-in-unarmed-teens-killing/>
- ACLU of Connecticut, "No Charges in Jayson Negrón's Death Shows Need For Police Accountability": <https://www.acluct.org/en/press-releases/no-charges-jayson-negróns-death-shows-need-police-accountability>

Utah



Background

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Independent Investigator: The investigating agency must not be the employer of the officer involved in the incident. The investigating team seems to typically consist of law enforcement personnel from many different agencies and investigators from the district attorney's office.



Charging: The District or County Attorney receives the investigation report and decides whether to file a criminal charge.

Origin

In March 2015, Utah enacted legislation (HB 361 – Investigation Protocols for Peace Officer Use of Force) requiring independent investigations of officer-involved critical incidents.



Designator: The chief executive of a law enforcement agency jointly designates an investigating agency with the district or county attorney.



Policy and Protocol Requirements: The law also requires each law enforcement agency in the state to adopt and post policies and procedures it has adopted to select the investigating agency if an officer-involved critical incident occurred in its jurisdiction, and protocols to ensure that investigations are conducted professionally, thoroughly, and impartially.



Timeline: Unknown



Scope of Law: Deaths involving officers and the use of a dangerous weapon by an officer against a person that causes injury to any person.

Outcomes



Case Volume

Since the effective date of the legislation, May 12, 2015, it is unclear how many investigations officer-involved critical incidents have been completed, but research yielded 42 critical use of force incidents.

Findings

Of these incidents, findings for nine cases are unknown. The majority of incidents were found to be justified. There are two cases in which the uses of force were found to have no justification, yet the DA declined to press charges. In one case, a Department of Corrections Adult Probation and Parole Agent was charged with Aggravated Assault for shooting a person on parole.



- The Washington Post, *Police Shootings Database*: <https://www.washingtonpost.com/graphics/national/police-shootings/>
- Salt Lake Tribune, "'How many names?' – With seven police shootings this year, Salt Lake County is on pace for a record high in use of lethal force": <https://www.sltrib.com/news/2018/04/22/how-many-names-with-seven-police-shootings-this-year-salt-lake-county-is-on-pace-to-have-highest-number-in-recent-history/>
- Salt Lake Tribune, "Utah parole agent charged with aggravated assault after he shot a man three times while stopped at Murray traffic light": <https://www.sltrib.com/news/2018/04/09/utah-parole-agent-charged-with-aggravated-assault-after-he-shot-a-man-three-times-while-stopped-at-murray-traffic-light/>
- For a comprehensive list of sources used to create the data point above, please visit: <https://bit.ly/2sW8sFF>

Pros & Cons



Pros

Requires Adoption of Policy and Protocol: The law requires that each law enforcement agency adopt and post its policies and procedures for selecting the investigating agency for an officer-involved critical incident.

Wider Scope: The law not only applies to deaths involving officers, but incidents in which an officer uses a dangerous weapon against a person that causes injury to any person.

Pros & Cons



Cons

Lack of Clarity in Law: Although the law requires that law enforcement agencies adopt protocols to ensure that investigations are conducted “professionally, thoroughly, and impartially,” it does not define these words in the context of investigating officer-involved critical incidents.

No Baseline Policy and Protocol: Each law enforcement agency may adopt different policies and protocols, which potentially creates inconsistencies for how incidents are investigated throughout the state.

Potential for Bias or Conflict: The Chief of Police selects the law enforcement agency to conduct the investigation, creating a potential for agencies to select favorable investigators.

It seems that investigative teams typically consist of law enforcement personnel from many different agencies. Also, cross-agency collaboration is a common law enforcement strategy in Utah. Despite the law that requires that investigators not be employed by the same agency as the involved officer, there still may be an inherent conflict of interest due to the prevalence of collaborations among law enforcement agencies.

No Single Repository for Data and Information: Because investigations are conducted by law enforcement agencies statewide, and are not overseen by a statewide agency, it is difficult for the public to access aggregate data and information about investigations.

- ACLU Utah, “Criminal Justice Re-cap of 2015 Session: Part 2!”: <http://www.acluutah.org/blog/item/983-criminal-justice-re-cap-of-2015-session-part-2>
- Salt Lake Tribune, “A team effort by law enforcement is putting bad Utahns in prison”: <https://www.sltrib.com/news/2018/02/01/a-team-effort-by-law-enforcement-is-putting-bad-utahns-in-prison/>

Community Reception & Proposed Reforms



"We're sick of police policing the police. Why are police policing the police? It makes no sense. It is completely absurd that we would have them investigate themselves."

- Carly Haldeman, demonstrator

"Investigations of law enforcement, by law enforcement, are not meeting the expressed needs of the public to which law enforcement is accountable."

- ACLU of Utah, after the shooting of Patrick Harmon was found to be justified.

Proposed Reforms to Law

- Timely and fair release of public information related to critical incidents involving violence between police and community members.
- Independent investigations of critical incidents by investigators who will not be engaged in possible future criminal prosecutions of community members injured by police.

- Salt Lake Tribune, "'How many names?' – With seven police shootings this year, Salt Lake County is on pace for a record high in use of lethal force": <https://www.sltrib.com/news/2018/04/22/how-many-names-with-seven-police-shootings-this-year-salt-lake-county-is-on-pace-to-have-highest-number-in-recent-history/>
- ACLU Utah, "Lack of Transparency Compounds Tragedy of Shooting Death of Patrick Harmon": <http://www.acluutah.org/newsroom/item/1373-statement-patrick-harmon>
- ACLU Utah, "ACLU of Utah Response to Recent Developments in Abdi Mohamed Shooting Investigation": <http://www.acluutah.org/newsroom/item/1194-aclu-of-utah-response-to-recent-developments-in-abdi-mohamed-shooting-investigation>

Other Models

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Community Reception

Summaries of Other Models

Colorado (§§ 16-2.5-301, 20-1-114): Requires all police departments to have policies in place that prescribe investigative protocols for incidents where an officer discharges a weapon that causes injury or death. Places discretion to release the report to the public in the hands of the district attorney.

Hawaii (§§ 28-151 through 153): Created a board responsible for reviewing criminal investigations of incidents of officer-involved death conducted by law enforcement agencies and issuing recommendations to the prosecuting attorney of the county in which the incident occurred.

Illinois (50 § 727/ 1–10): At least two investigators, or an entity of agency comprised of at least two investigators, are required to investigate officer-involved deaths and they must not be employed by the same agency that employs the officer involved in the incident. There are certification and training requirements for lead investigators. Each law enforcement agency is required to have a written policy regarding the investigation of officer-involved deaths.

New York (Executive Order 147): Requires state agencies to investigate all use of force by police officers or any death of an unarmed civilian. If investigators determine that there is no probable cause to file charges against an officer, a report detailing their findings will be provided to the Governor.

Snohomish County

San Joaquin County

Problems

- Employer agency investigations lack independence.
- District attorney involvement in investigations presents similar conflicts of interest.
- Non-law enforcement entities, while more independent, lack comparable levels of investigative expertise.

Recommendations

- Prohibit employer agency from serving as the lead investigator.
- Employer agency involvement should be minimal.
- Employer agency involvement should not include participation in criminal investigation interviews.

Questions

Seattle

Statewide

Questions

1. What types of uses of force should qualify? (Type III, Deadly)
2. Who should conduct investigations of serious and deadly uses of force?
3. Who should have power to designate an investigating body?
4. What kinds of requirements related to the investigation should be codified?
5. What should the law include to control for bias and conflicts of interest?
6. Who should review completed investigations?
7. Should there be a deadline for completing investigations?
8. Should the law require that investigative reports be shared with the public? When and under what circumstances?

Statewide

1. Should there be a statewide repository for data and reports related to investigations?
2. What should be the statewide baseline standards for investigations?
3. Should there be a requirement for each law enforcement agency to adopt policy and protocol?

End